fore contended that the making of any order by the court in granting the plaintiffs' application for an interim injunction would in fact pre-empt the Registrar from exercising his discretion in the performance of his functions in considering the defendants' application for registration of their get-up. They also filed several samples of the defendants' packages bearing their get-up (*vide* Enclosure 13)).

In the case of *Berlei (U.K.) Limited* v. *Bali Brassiere Company Incorporated,*[1] Megarry J. whilst addressing his mind to certain provisions of the English Trade Marks Act, 1938 and the English authorities relating thereto stated at page 477: —

"These cases establish, first, that prima facie a plaintiff who has alternative remedies open to him (whether in trade mark cases or otherwise) is entitled to choose his tribunal, and the defendant is not entitled to divert him from his chosen tribunal to some other tribunal of the defendant's choice. Second, the cases show that the matter is nevertheless one for the discretion of the court, and that if the court reaches the conclusion that the interests of justice would best be served by ordering a stay, then a stay there should be. In considering the interests of justice, plainly one must consider the claims of both parties."

In the present case I formed the view that a stay ought to be ordered for the following reasons. The defendants averred that they had expended, and this was not denied, large sums of money to advertise their products since 1972 and had in fact on January 31, 1975 applied for registration of the "Rasa Sayang" get-up. It was obvious that up to the date of the filing of the action on May 18, 1978 by the plaintiffs to restrain the defendants the defendants had actually been carrying on their trade. It seemed to me to be rather unjust to decide on the merits of the case when the matter of the defendants' application was before the Registrar whose knowledge and experience in these matters should be allowed to be utilized to the full when considering the application and the objection thereto. I did not think that it was right in any way to interfere with his discretionary functions by any order of the court at that time. I did not consider that irreparable damage or great hardship would be occasioned to the plaintiffs if the defendants were not restrained pending the decision of the Registrar. Any steps to effect a speedy resolution of the dispute, I thought, could better be taken by way of *mandamus* to compel a prompt decision by the Registrar and not by way of this suit which would pre-empt his discretion.

In all the circumstances I was of the view, having considered the balance of convenience which I thought favoured the defendants, that the interests of justice would be served by ordering a stay of all further proceedings in the action and accordingly so ordered with costs to be costs in the cause.

Order accordingly.

Solicitors: *Shearn Delamore & Co.; Tan Sri Abdul Aziz & Co.; Darshan Singh & Co.*

LOO FANG SIANG v. KETUA POLIS DAERAH, BUTTERWORTH

[O.C.J. (Arulanandom J.) March 31 & August 19, 1980]
[Penang — Originating Summons No. 598 of 1979]

Criminal Law and Procedure — Police report — Whether "public document" — Criminal Procedure Code (Cap. 6), s. 107.

The applicant in this case was involved in a road accident on January 6, 1979 when a motor cycle KH 8909 coming from the opposite direction encroached onto his path and collided into him. As a result of the accident he suffered serious injuries and had commenced legal proceedings against the rider of the motorcycle for damages. His solicitors applied to the respondent for "all the police reports, sketch-plan and key and photographs taken in connection with the aforesaid accident" and the respondent supplied them with all the relevant documents except the police report made by the rider of the motorcycle which had collided into the applicant. In reply to further requests by the applicant's solicitor for a copy of the said report the respondent claimed that he could not supply the report because the maker of that report was not a client of the applicant's solicitor. The applicant then applied to the present court for an order to compel the respondent to supply him with the said report as he required it to process his claim for damages against the rider of the said motorcycle.

Held, allowing the application: (1) a person who seeks to establish negligence on the part of someone who collided into him has a legitimate interest in knowing what the other person's version of the accident as given in his police report is;

(2) a public document is defined as "a document made for the purpose of the public making use of it." And that is exactly what police reports under section 107 of the Criminal Procedure Code are. If the right of the public to have access to public documents is to be limited or curtailed, then the legislature would have expressly so stated or it must be established that it is contrary to public interest. In the absence of such limitations, public documents must be treated as "public documents."

Case referred to:-

(1) *Anthony Gomez* v. *Ketua Police Daerah, Kuantan* [1977] 2 M.L.J. 24.

ORIGINATING SUMMONS.

V. Muthusamy for the applicant.

M. Pathmanathan (Federal Counsel) for the respondent.

Arulanandom J.: This was an application by the applicant for an order in the following terms: —

(a) A declaration that all informations recorded under section 107 of the Criminal Procedure Code (Cap. 6) are public documents;

(b) A declaration that the police report lodged by the rider of motorcycle No. KH 8909 on January 6, 1979 at Telok Ayer Tawar Police Station is a public document;

(c) A declaration that the applicant has a right to inspect the report of the rider of motorcycle No. KH 8909 and to a copy thereof on payment of fees;

(d) Costs.

The person cited as respondent was the Ketua Polis Daerah, Butterworth.

According to the affidavit filed in support of the application sworn to on November 23, 1979, the applicant was involved in a road accident on the Butterworth-Sungai Petani Road on January 6, 1979 when a motorcycle KH 8909 coming from the opposite

direction encroached onto his path and collided into him. As a result of the accident he suffered serious injuries and had commenced legal proceedings through his solicitors against the rider of the motorcycle for damages.

His solicitors applied to the Ketua Polis Daerah, Butterworth, for "all the police reports, sketch-plan and key and photographs taken in connection with the aforesaid accident" and the Ketua Polis Daerah, Butterworth, supplied them with all the relevant documents except the police report made by the rider of motorcycle No. KH 8909 which had collided into the applicant. To subsequent requests by the applicant's solicitor for a copy of the said report the Ketua Polis Daerah, Butterworth, replied that he could not supply the report because the maker of that report was not a client of the applicant's solicitor. The applicant now comes to court for an order to compel the Ketua Polis Daerah, Butterworth, to supply him with the said report as he requires it to process his claim for damages against the rider of motorcycle No. KH 8909.

At the outset, counsel for respondent conceded that the police report concerned was a public document.

The question of accessibility of third parties to police reports not made by them was considered in depth by the Federal Court in the case of *Anthony Gomez* v. *Ketua Polis Daerah, Kuantan.*[1] The arguments were considered in full in that case and it would be superfluous for me to repeat them in this judgment. Suffice it to quote Suffian L.P., in delivering the judgment of the court, when he said:

"From the above we would deduce the law to be as follows: though our section 76 (of the Evidence Act) is silent as to the right of the applicant to inspect the first information report in question, it is clear that under the common law he has that right, as he is a person interested in it and inspection is necessary for the protection of his interest. This first information report is admissible in evidence in the criminal trial against him under section 157 of the Evidence Act and therefore the applicant or his counsel should be supplied a copy.

If a certified copy of the first information report in question is supplied to the applicant, it is admissible in evidence under section 77 of the Evidence Act. What was then the point of adding section 108A Criminal Procedure Code in 1936? The learned judge who considered this action thought that the point was that the legislature had never intended that a person such as the applicant should have a right of inspection under section 76 of the Evidence Act.

With respect it would appear to us that in 1936 the legislature overlooked the fact that under the common law such a person already had that right, as was declared as long ago as in the year 1888 in *Mutter* (*Mutter* v. *Eastern and Midlands Railways Co.* L.R. 38 Ch. D. 92)."

Anthony Gomez' case was one where he was charged with the offence of criminal intimidation of one V. Bernard Vas under section 506 of the Penal Code and suspecting that the charge was based on a report by the said V. Bernard Vas, his solicitor wrote to the police for a copy of the report Bernard Vas made to the police under section 107 of the Criminal Procedure Code. The police refused and hence his application to court.

The respondents in the case before the court are of the view that *Anthony Gomez'* case has no relevance here as the applicant is seeking a police report made by another person for the purpose of civil proceedings, and not for the purpose of defending himself in criminal proceedings. This notion is completely devoid of merit.

As Suffian L.P., said in the *Anthony Gomez'* case,

"In our judgment the applicant *has* a right to inspect the first information report and therefore the O.C.P.D. should have given him a certified true copy. The applicant has a right to inspect the first information report under the common law because of his interest in it."

The operative words are "because of his interest in it." "His interest" is not qualified or limited to matters where he is involved in criminal prosecution. He has just as much interest in police reports made by third parties which may be defamatory, false or imputing negligence on the highway, lack of due care and consideration, breach of statutory duty, etc., etc. And a person who seeks to establish negligence on the part of someone who collided into him has a legitimate interest in knowing what the other person's version of the accident as given in his police report is.

In *Earl Jowitt's* Dictionary of English Law, a public document is defined as "a document made for the purpose of the public making use of it." And that is exactly what police reports under section 107 of the Criminal Procedure Code are. If the right of the public to have access to public documents is to be limited or curtailed, then the legislature would have expressly so stated or it must be established that it is contrary to public interest. In the absence of such limitations, public documents must be treated as "public documents."

In the reasons stated above the application was allowed with costs.

Application allowed.

Solicitors: *V. Muthusamy & Co.*

CHAN KIM HEE v. KARAM SINGH & ANOR.

[O.C.J. (Yusof Abdul Rashid J.) October 20, 1980]
[Johore Bahru — Civil Suit No. 360 of 1975]

Damages — Quantum — 3 cm. leg-shortening and compound fracture of tibia and fibula.

Road Traffic — Duty of motorist when turning across line of oncoming traffic.

The plaintiff in this case sought for damages arising out of a road accident as a result of the negligence of the first defendant who was a servant of the second defendant. At the material time of the accident, the motor lorry driven by the second defendant was making a right turn into a junction leading towards a side road. The plaintiff suffered the following injuries: (1) a compound fracture at the lower end of the tibia and fibula with a lacerated wound at the site of fracture. A piece of bone protruded through the wound (4" long); (2) superficial abrasions over the knees (both right and left) and over the middle 3 knuckles of the left hand and over the (R) and (L) shoulder regions; (3) 3 cm. shortening of the right leg.

The plaintiff was a chief clerk and earned a salary of $310 plus $150 fixed allowance per month. He was given 6 months medical leave. At the time of the trial he was 43 years old. He walked with a limp as his right leg could not support the whole body.

Held: (1) the first defendant had turned "across the line of oncoming traffic" when he suddenly turned intending to go into a minor road and he failed to give any "conventional signal to deviate from" his course. He was therefore wholly to blame for the collision;